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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. ——

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, *Petitioner*

v.

E. T. BRASWELL, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on January 12, 1968.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit is reported at 388 F. 2d 193 and is reproduced in the Appendix to this petition.[1] There was no opinion by the District Court for the Southern District of Alabama.

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[1] References to this appendix are designated by the appropriate page numbers preceded by "App."

JURISDICTION

The judgment of the Court of Appeals was entered on January 12, 1968 (R. 328).[2] The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether a federal court, proceeding under Section 102 of the Labor-Management Reporting and Disclosure Act of 1959 to adjudicate an alleged infringement of rights secured by Section 101 (a) (5) of that Act, may substitute its interpretation of substantive union constitutional and by-law provisions for the reasonable interpretation of duly designated union members and officers.

2. Whether, in such a proceeding, a federal court may substitute its evaluation of the evidence submitted to duly designated union members and officers for the reasonable evaluation by those members and officers.

3. Whether punitive damages are ever available to plaintiffs against unions in such proceedings.

4. If punitive damages are available, whether they may be awarded by a jury notwithstanding the complete lack of any evidence showing malice by defendant and the absence of any compensatory damages sustained by plaintiff.

STATUTE INVOLVED

Section 101 (a) (5) of the Labor-Management Reporting and Disclosure Act (hereinafter referred to as the "Act"), 73 Stat. 523, 29 U.S.C. § 411 (a) (5), provides:

> Safeguards Against Improper Disciplinary Action—No member of any labor organization may be fined, sus-

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[2] References to that portion of the certified transcript of record containing the printed record on appeal and the proceedings in the Court of Appeals, contained in two volumes, are designated by the appropriate page numbers preceded by "R."

> pended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

Section 102 of the Act, 73 Stat. 523, 29 U.S.C. § 412, provides:

> Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

STATEMENT OF THE CASE

This case involves the expulsion, following internal union proceedings, of E. T. Braswell from his membership in the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers. Braswell brought suit in the District Court for the Southern District of Alabama invoking that court's jurisdiction under Section 102 of the Act (73 Stat. 523, 29 U.S.C. § 412), alleging that this expulsion was in violation of rights secured by Section 101(a)(5) of the Act, and seeking compensatory and punitive damages. Following trial before a jury, the District Court found the expulsion unlawful under Section 101(a)(5) and sent the question of compensatory and punitive damages to the jury. The jury returned a verdict in favor of the plaintiff in the amount of $12,500, and the Court entered a judgment in that amount. On appeal by the Union to the Court of Appeals for the Fifth Circuit, the judgment was affirmed.

A. Facts Leading Up to the Internal Union Proceedings

In the words of the Court of Appeals (App. 2-3):

> Braswell had been a member of the International since 1909, and at the time of his expulsion was a member in good standing of Local 112 in Mobile, Alabama. In the fall of 1960 there was considerable dissension in the Union over the local business manager's allegedly discriminatory assignment of jobs. On October 5, 1960, the business manager, Herman B. Wise, after reading his morning mail, left his office for a local plant where he intended to engage in union business. As he walked out, George Hardeman, one of the members of the Union, met him, handed him a telegram and asked Wise, "Can you explain this to me." Before Wise could finish reading it, Hardeman struck him in the face. Several other members were "standing around." One clutched at Hardeman, but another threatened to "drop him in his tracks" if he did not release Hardeman. Braswell took no part in the actual fighting but remarked to the man holding Hardeman, "You keep your hands off of him." The police were called. As Wise recounted the incident to a police officer, he pointed to Braswell and said, "And this man was standing here." At this point Braswell struck Wise in the face, breaking his nose.

It should be added that the aforementioned telegram contained a request by an employer for referral of Hardeman by Wise, that Braswell and Hardeman were among those members displeased with the local union's business practices, and that it was Wise who called the police following the assault by Hardeman (R. 111-12, 209, 213-18, 243-45, 252-53, 260, 270; UT. 84, 100[3]). See also UT. 24, 29-38, 44-

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[3] References to that portion of the certified transcript of record containing the transcripts of the hearings before the local union trial committee and the International executive council appeals panel are designated by appropriate page numbers preceded by "UT." and "UA." respectively. These transcripts were admitted in evidence in the District Court as Plaintiff's Exhibit 3 and 3-A and Defendant's Exhibit 1, respectively.

45, 56, 57-58, 70-71, 80-84, 94-97; R. 110-114 substantiating the Court of Appeals' summary, quoted above, Braswell's interference in the Hardeman-Wise altercation, and the fact that the entire episode occurred in the context of members' dissatisfaction with the business manager's referral practices.

B. Internal Union Proceedings Resulting in Expulsion

Wise charged Braswell, Hardeman and another member of the local union (Bullock) with violations of Article XIII, Section 1 of the Subordinate Lodge Constitution[4] and Article XII, Section 1 of the Subordinate Lodge Bylaws[5] by

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[4] Article XIII, Section 1 of the Subordinate Lodge Constitution provides:

> Any member who endeavors to create dissension among the members; or who works against the interest and harmony of the International Brotherhood or of any District or Subordinate Lodge; who advocates or encourages a division of the funds, or the dissolution of any District or Subordinate Lodge, or the separation of any District or Subordinate Lodge from the International Brotherhood; who supports or becomes a member of any dual or subversive organization which shall be hostile to the International Brotherhood or to any of its Subordinate Lodges, or which is antagonistic to the principles and purposes of the International Brotherhood, shall upon conviction thereof be punished by expulsion from the International Brotherhood.

The International and Subordinate Lodge Constitutions, contained in one volume, were admitted in evidence in the District Court as Plaitiff's Exhibit 1.

[5] Article XII, Section 1 of the Bylaws provides:

In addition to the offenses and penalties set out in the applicable provisions of the International and Subordinate Lodge Constitution, the following offenses and penalties shall be observed in this Subordinate Lodge, and any member who violates same shall, if found guilty after proper hearing as provided herein, be punished as warranted by the offense.

(1) It shall be a violation of these By-Laws for any member through the use of force or violence or the threat of the use

(Continued)

reason of their participation in the above-described episode (PX-4[6]; App. 3); UT. 26-27.[7]

Braswell was served with copies of Wise's charges enclosed in a letter of notice from the local union President dated October 11, 1960 (PX-5). At a local union meeting, A. W. George, President of the local, appointed a three-member trial committee to hear the charges, and challenges were received to two of these appointees which were overruled by a vote of the membership (R. 123-24, 134-36, 160). Braswell selected local union member Dobson to represent him (R. 127).

The hearing before the trial committee on the charges against Braswell, Hardeman and Bullock was held on No-

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of force or violence to restrain, coerce or intimidate, or attempt to restrain, coerce or intimidate any official of this International Brotherhood or Subordinate Lodge to prevent or attempt to prevent him from properly discharging the duties of his office.

These bylaws were admitted in evidence in the District Court as Plaintiff's Exhibit 2.

[6] References to that portion of the certified transcript of record containing the exhibits admitted in evidence by plaintiff and defendant in the District Court are designated by appropriate numbers preceded by "PX-" and "DX-" respectively.

[7] Wise's charge, contained in a letter from Wise to the local union President, dated October 10, 1960, stated in pertinent part (PX-4):

> Subject: Cha[r]ge of violation of Article XIII, Section 1 Subordinate Lodge Constitution and Article XII, Section 1 Subordinate Lodge By-Laws by George W. Hardeman, Register #1,259,097, Kermit W. Bullock, Register #1,205,022 and E. T. Braswell.
>
> Dear Sir and Brother:
>
> Please accept this letter as a formal statement of cha[r]ges of violation of the above captioned articles and sections of the Subordinate Lodge Constitution and Subordinate Lodge By Laws by George W. Hardeman, Register #1,259,097, Kermit Bullock, Register #1,205,022 and E. T. Braswell.

(Continued)

vember 12, 1960. Wise, the charging party, conducted the prosecution and Braswell was, throughout the proceeding, present and represented by Dobson. A full transcript was made of this hearing. The charges were read at the outset of the hearing and a plea of not guilty received from Braswell. Braswell was afforded and exercised the right to testify in his own behalf, call and examine his own witnesses, and cross-examine all witnesses for the prosecution including charging party Wise. Dobson was vigorous in his representation of Braswell. The trial committee was completely fair and impartial throughout the proceeding (e.g. UT. 94, 2, 6, 8, 11, 56); at the conclusion thereof, Dobson stated his belief that the committee had afforded Braswell a fair hear-

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Such violations occurred at the Union's offices at 750 Conti Street at approximately 10:10 A.M. on October 5, 1960, when I walked out of my office into the waiting room with W. C. Bell. At that time Mr. Hardeman raised up out of his chair and handed me a telegram and asked me to explain it. While I was reading the telegram Hardeman, without warning, started beating me about the face and head causing severe injuries. W. C. Bell attempted to get Hardeman to stop beating me by grabbing his shoulders and asking him to stop. I did not return any of Hardeman's blows. E. T. Braswell, who is a member of the Brotherhood but not of Lodge 112, then threatened Bell if he didn't quit attempting to stop the beating. In addition Kermit R. Bullock rushed in from the front porch of the office and added his warning to Braswell's saying, "Bell you keep your hands off of George or I will knock your block off." Hardeman continued to beat me about the face and head until he was exhausted. I then went back to the office phone and called the police. When they arrived I went out to talk to them and saw Hardeman and Bullock had left. The police officers asked me what had happened and when I started to tell them, E. T. Braswell struck me in the face breaking my nose at which time the two police officers subdued him.

• • •

Fraternally yours,
/s/ Herman H. Wise
H. H. Wise
Register #861842
Business Manager L-112

ing and his confidence that the committee would "do what's right" (UT. 168, 171). See UT. 1-172.

Substantial evidence was introduced at these proceedings to support the "facts leading up to the internal union proceedings" as described above. See "UT." references in section "A" *supra*. In addition, evidence was submitted that one of the duties of Wise, as business manager, is to maintain law and order in the hiring hall (UT. 50) and that internal union remedies are available to members of the local union claiming to be aggrieved by unfair referral practices by their business manager (UT. 56, 60).

Article XIV, Section 2(d) of the Subordinate Lodge Constitution provides that the trial committee shall "determine, as a jury, whether or not the accused is guilty, guilty in part, or not guilty." (PX-1; R. 102). The trial committee in the instant case made a determination of "guilty as charged" (R. 136; PX-7). This determination was reported to the local union at a regular union meeting and was sustained by the membership by a vote of 61-36 (R. 136, 161). The membership then voted to expell Braswell from the organization by a vote of 56-36 (R. 137).

On December 5, 1960 Braswell appealed the membership's action to the International President (PX-6; R. 137). By letter dated December 19, Braswell was advised the appeal had been considered and the membership's action sustained (PX-7; R. 139). Braswell then appealed the International President's decision to the Executive Council of the International (UA. [8]; R. 161-62). A hearing was held in Mobile, where the local union is located, on March 28, 1961, by a three-member panel of the Council not including the International President (UA. cover page). Braswell was notified of the hearing, was present thereat and allowed to introduce any additional evidence (UA. 9-14). A full transcript of this

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[8] See *supra*, note 3.

hearing was made which together with the full trial transcript formed the record before the Executive Council (UA.; R. 163). The good faith and impartiality of the hearing panel is evident (UA. 14, 4-5). Subsequent to this hearing, the Executive Council sustained the International President's decision (R. 163).

C. The District Court's Decision

Braswell filed his suit in the District Court on September 12, 1963 (App. 4). At the hearing on the merits, held February 15 and 16, 1966 (R. 87), the transcripts of the local and International union proceedings were admitted in evidence (R. 118, 159). The additional testimony given in the District Court hearing concerning the events leading to Braswell's expulsion was substantially similar to the testimony contained in those transcripts (see "R." references in section "A" *supra*).

1. Lawfulness of the Expulsion

At the close of the hearing, the District Court ruled, on the basis of the transcript of the hearing before the local union trial committee that "there was no evidence in this transcript which would justify him being convicted—being guilty of section 1 of Article 13 of the subordinate lodge constitution" (R. 296-97). With respect to the other provision of union law under which Braswell was charged, the Court stated that (R. 297)

> there is evidence in here which might support a finding of guilty under section 1 of article 12 of the subordinate lodge by-laws.

But the Court refused to uphold the expulsion on the basis of this latter provision, holding that the wording of the union's "verdict" made it impossible to tell whether Braswell was found guilty thereunder (R. 297).

2. Punitive Damages

Having held the expulsion unlawful, the District Court

proceeded to send the issue of compensatory and punitive damages to the jury (R. 297-99), holding that punitive damages are available in a suit under Section 102 of the Act (R. 294).[9]

The jury was instructed to return a general award of damages rather than to distinguish between any compensatory and punitive damages (R. 300). The jury returned a general award in the amount of $12,500 and the Court entered a judgment in that amount (R. 83-84).

D. The Court of Appeals' Decision

The Court of Appeals affirmed the judgment of the District Court (R. 328).

1. Lawfulness of the Expulsion (App. 10-12)

The Court of Appeals affirmed the lower court's ruling on the expulsion issue but on a different ground—that the expulsion "was not valid under either provisions mentioned in the charges."

The Court relied on two asserted principles of law allegedly applicable under Section 101 (a)(5) of the Act—1) "A union cannot discipline its members except for offenses [explicitly] stated in its constitution and by-laws"; 2) "penal provisions in union constitutions [and by-laws] must be strictly construed. . . . In determining whether discipline was properly imposed any ambiguity or uncertainty in the constitution [and by-laws] must be construed against the union and in favor of the member."

Applying these principles, the Court then proceeded to interpret Article XIII, Section 1 of the Subordinate Lodge

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[9] The District Court denied defendant's motion for a directed verdict which argued, *inter alia*, that the jury should not be sent the issue of punitive damages because plaintiff failed to prove, as a matter of law, that he was entitled to any such damages (R. 85-86, 294).

Constitution as "directed at threats to the union as an organization and to the effective carrying out of the union's aims." "Braswell's fist," the Court stated, "was not such a threat." The Court interpreted Article XII, Section 1 of the by-laws as limited to acts performed with the *purpose* of preventing an officer of the union "from properly discharging the duties of his office."

The Court concluded that there was no evidence to sustain a violation of either provision as construed.

The Court expressly disclaimed passing on whether the union disciplinary proceedings complied with the specific procedural guarantees provided in paragraphs (A)-(C) of Section 101(a)(5), holding that "these matters are not before this court" (App. 10 n. 8).[10]

2. Punitive Damages (App. 13-16)

The Court held that punitive damages are available to plaintiffs against unions in suits under Section 102 for violations of Section 101(a)(5). The Court further held that the lower court properly sent the issue of punitive damages to the jury and that "there was sufficient evidence for the jury to find that the Union had acted with malice or wanton indifference."

REASONS FOR GRANTING THE WRIT

I. The questions presented by the Petition are of major significance in the administration of the "Bill of Rights" Title of the Labor-Management Reporting and Disclosure Act of 1959 and of internal union affairs. The decisions by the courts below represent a fundamental overriding of the legislative intent and a substantial

[10] The Court noted that the District Court ruled against plaintiff on several alleged procedural defects and did not formally rule on others, and that plaintiff took no exceptions with respect to this matter.

danger to the continuing viability of labor organizations throughout the country.

This case involves the extent to which Congress, in Sections 101(a)(5) and 102 of the Act, authorized federal courts to interfere with internal union disciplinary proceedings directed by their memberships at individual members believed to have engaged in conduct detrimental to the goals and welfare of the union society. At stake is not merely the interests of labor organizations and their memberships but the interests of the entire citizenry embodied in the federal labor policy developed and refined by Congress for more than thirty years. "Integral to this federal labor policy has been the power in the chosen union to protect against erosion its status under that policy through reasonable discipline of members who violate rules and regulations governing membership." *NLRB* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 181. In supposed support of the rights of individual union members, the decisions below actually thwart transcending democratic values—the judicial effectuation of the lawful intent of Congress and of union majorities. That the erroneous principles of law relied upon by the courts below could be applied to facts such as those in this case so as to override this intent makes the danger of a continued application of those principles even clearer.

A. Lawfulness of the Expulsion

1. The logical crux of the Court of Appeals' decision on the expulsion issue lies in its narrow construction of the union constitutional and by-law provisions which formed the basis for Braswell's expulsion. Thus, the Court interpreted Article XIII, Section 1 of the subordinate lodge constitution to mean that a physical assault by a union member of the union business manager, on union property, during business hours, while the business manager was attempting to restore law and order—disrupted in the course of a dispute involving several members over union policies—so that he could proceed about his union business, did not come

within the phrase:

> . . . who endeavors to create dissension among the members; or who works against the interest and harmony of the International Brotherhood or of any . . . Subordinate Lodge.

The Court interpreted Article XII, Section 1 of the by-laws to mean that the same act did not come within the phrase

> . . . for any member through the use of force or violence to restrain, coerce or intimidate, or attempt to restrain, coerce or intimidate any official of this International Brotherhood or Subordinate Lodge to prevent or attempt to prevent him from properly discharging the duties of his office.

According to the Court, the by-law provision is limited to acts committed with the "purpose" of preventing the proper discharge of official duties. See App. 12.

At best—from the Court's point of view—, the Court's construction is one reasonable interpretation. Surely, it is also a reasonable construction that a member committing the act described above "works against the interest and harmony" of the union or "endeavors to create dissension among the members," as prescribed in the union constitution. It is similarly reasonable to interpret the by-law provision, written in the disjunctive ("prevent or attempt to prevent"), as prohibiting force having the *effect or* purpose of preventing.

We submit that Sections 101 (a)(5) and 102 of the Act do not permit the federal courts to substitute their construction of union provisions for the reasonable construction of such provisions by the unions themselves.

Prior to the enactment of the Act, federal law did not provide a remedy for persons aggrieved by union discipline, at least where, as here, such discipline was pursuant to a union rule respecting the retention of membership and did not restrain or coerce employees in their "concerted activ-

ities." Cf. Section 8(b)(1)(A) of the National Labor Relations Act, as amended; *NLRB* v. *Allis-Chalmers Mfg. Co., supra.* Under the common law, which did (and continues to —see Section 103 of the Act—) provide such a remedy, it was clearly established that courts will not interfere with the interpretation placed by unions on their own penal provisions unless such interpretation is arbitrary or plainly unreasonable. 87 C.J.S. *Trade Unions* § 13, p. 776; Annot., 21 A.L.R. 2d 1397, 1414; Dangel and Shriber, *Labor Unions,* § 282, p. 308; *Lang* v. *Int'l Photo Engravers Union,* 343 S.W. 2d 385, 388 (Ky.); *U.A.W.* v. *Woychik,* 5 Wis. 2d 528, 93 N.W. 2d 336; *Couie* v. *Local Union No. 1849, United Bhd. of Carpenters,* 51 Wash. 2d 108, 316 P. 2d 473; *Naylor* v. *Harkins,* 27 N.J. Super. 594, 99 A. 2d 849, 857; *Way* v. *Patton,* 195 Or. 36, 241 P. 2d 895; *United Bhd. of Carpenters* v. *Local 14,* 178 S.W. 2d 558, 567 (Tex. Civ. App.).

Insofar as pertinent to Sections 101 (a)(5) and 102 of the 1959 Act, the Act began its course through the 86th Congress as S. 1555, the "Kennedy-Ervin" Bill. As introduced on March 25, 1959 and as favorably reported three weeks later by the Senate Committee on Labor and Public Welfare, it contained no "bill of rights" title, being limited to reports and disclosures, elections, trusteeships and an encouragement to unions to voluntarily adopt codes of ethical practices. The "bill or rights" title, including a section on union disciplinary proceedings, was initially added to the bill on the Senate floor by the "McClellan Amendment" on April 22 by the narrow vote of 47-46. Two days later, Senator Kuchel for himself and a number of other Senators introduced an amendment to the McClellan Bill of Rights. On April 25, the "Kuchel Substitute" was adopted by a vote of 77-14. Shortly thereafter, S. 1555 passed the Senate. In the House, the Landrum-Griffin Bill (H.R. 8400) was offered, on August 12, 1959, as a substitute for a committee-reported bill. Although Landrum-Griffin differed substantially from S. 1555 in certain other respects, the provisions of its "bill of rights" title were largely similar, and the

specific provision on union discipline (§ 101(a)(5)) was identical to those of the Kuchel Substitute. The union discipline provision then was passed unchanged by the House, a Senate-House Conference, and the Congress. It became Section 101(a)(5) of the Act.

From beginning to end in the legislative sequence summarized above, the bill's "Declaration of Findings, Purposes, and Policy" remained substantially unchanged. One unaltered finding appears at the very outset of the Act and provides:

> Sec. 2(a) The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, *and otherwise engage in concerted activities for their mutual aid or protection.* (Emphasis added.)

The Senate Committee report on the Kennedy-Ervin bill stated:

> In acting on this bill the Committee followed three principles: 1. The Committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. Moreover, in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents. 2. Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs. The committee strongly opposes any attempt to prescribe detailed procedures and standards for the conduct of union business. Such paternalistic regulation would weaken rather than strengthen the labor movement; it would cross over into the area of trade union licensing and destroy union independence. . . .
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> The bill reported by the committee, while it carries

> out all the major recommendations of the Senate select committee, does so within a general philosophy of legislative restraint.
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> The test of a sound bill in this complex and relatively new legislative area is whether it is workable and will produce the desired results without destroying valued free institutions. S. Rep. No. 187, 86th Cong., 1st Sess. 7 (1959), I *Leg. Hist. of the* LMRDA (NLRB) at 403.[11]

This theme remained the touchstone underlying the Kuchel Substitute's provisions on union disciplinary proceedings. Speaking of the "bill of rights" title in the final stages of the legislative process, Congressman Landrum stated (*Leg. Hist. of the LMRDA* (Dept. of Labor) at 318 (July 27, 1959)):

> As one union official put it in the testimony:
>
> > "We believe that the control of the union by its membership is the best way to insure its democracy and keep the officers in line—I believe that the best demonstration of democracy in action, is where the people directly handle their own union business."
>
> This the substitute bill seeks to accomplish, by insuring effective membership control.

Thus, unlike Section 301 of Taft-Hartley (enacted in 1947), for example, in which Congress instructed the courts to fashion a complete body of federal common law, Section 101(a)(5) of the 1959 Act was merely an effort to treat limited aspects of the problem of union discipline.

The McClellan Amendment itself, while providing more extensive procedural requirements than those finally adopted, was limited to guaranteeing specifically enumerated *procedures* surrounding the disciplinary hearing and decidedly

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[11] This language from the Senate report was quoted with approval, as representative of the legislative intent, by this Court in *Wirtz v. Local 153, Glass Bottle Blowers Ass'n.*, 389 U.S. 463, 471 n. 10.

did not extend to allowing courts to review "*de novo*" the meaning of rules of labor organizations as interpreted by those organizations.[12] McClellan himself supported his Amendment in terms of guaranteeing good faith by union officials (*Leg. Hist. of LMRDA* (D. of L.) at 250-51, 253, 254). And Senator Kennedy stated, with the apparent agreement of the Amendment's sponsors, [13] that the Amendment was more limited in the rights it created than the common law (*Ibid.* at 257, 258).[14]

But even the limited McClellan Amendment was subjected to harsh attack by the sponsors of the Kuchel Substitute on the ground that the specified procedural requirements—particularly the "published rule" and transcript

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[12] Section 101(a)(6) of the McClellan Amendment provided: Safeguards against improper disciplinary action.—No Member of any such labor organization may be fined, suspended, expelled or otherwise disciplined by such organization or any officer thereof except for breach of a published written rule of such organization which is not inconsistent with any of the provisions of this title. Disciplinary action may not be taken unless such member has been (A) served with a written copy of the provisions of the constitution and bylaws or other governing charter of such organization which contains a listing of the rights and safeguards afforded him pursuant to this title with respect to the conditions under which disciplinary action may be taken; (B) served with written specific charges; (C) given a reasonable time to prepare his defense; (D) afforded a full and fair hearing; and (E) afforded final review on a written transcript of the hearing, by an impartial person or persons (i) agreed to by such organization and the accused, or (ii) designated by an independent arbitration or mediation association or board.

[13] The response by McClellan and other sponsors to Kennedy's argument was the necessity of including a clause precluding preemption of the common law. *Ibid.* at 258, 262. The result was Section 103, offered on the Senate floor by Senator McClellan.

[14] With respect to the partial incorporation of the common law in Section 101(a)(5), see Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 838 (1960).

requirements—were excessively cumbersome and needlessly onerous in the context of union life. *Leg. Hist. of LMRDA* (D. of L.) at 250, 290 (Senator Clark); at 260-61 (Senator Morse); at 271 (Senator Kennedy); at 287 (Senator Kuchel). As noted, the Kuchel Substitute, whose provision on union discipline was identical to Section 101 (a) (5) of the Act, was overwhelmingly approved to replace the McClellan Amendment. Of significance was its removal from the McClellan Amendment of the requirement that discipline be imposed solely for breach of published written rules of the union. Surely, the elimination of this requirement is inconsistent with the asserted principle that federal courts reviewing disciplinary proceedings under the standards of Section 101 (a) (5) may not only require that discipline be for breach of such rules but may also substitute their interpretations of such rules for those of the unions. Explaining Section 101 (a) (5) of his Substitute, Senator Kuchel stated (*Leg. Hist. of LMRDA* (D. of L.) at 288):

> [T]he U.S. district court will be able to determine whether the rights of the union member have been protected and whether he has had constitutionally reasonable notice and a reasonable hearing, and whether the matter has been reasonably disposed of.

Following the Senate passage of S. 1555, Senator McClellan testified in favor of the Kuchel Substitute "bill of rights" before a Joint House Subcommittee. *Hearings on H. R. 3540 Before a Joint Sub-Committee of the House Committee on Education and Labor,* 86th Cong., 1st Sess., pt. 5, at 2234-47, 2284-86 (1959). McCellan asserted that the Substitute was intended as a compromise to his own Amendment, and implied that the Substitute was *"a compromise bill of rights acceptable to the unions"* (at 2285; also reported at I *Leg. Hist. of LMRDA* (NLRB) at 1294) (emphasis added). He stated that it was drafted *"in consultation with the labor leaders of the AFL-CIO and others"* (at 2236) (emphasis added). He emphasized that the country must continue to have strong unions (at 2243), that the

"bill of rights" title was not needed for 90 or 95% of the unions (at 2237), that the title "provides minimum, not maximum standards" (at 2285; also reported at I *Leg. Hist. of LMRDA* (NLRB) at 1294), and that the language therein "is clear and explict" (at 2285; also reported at I *Leg. Hist. of LMRDA* (NLRB) at 1295). Once again he recognized that "the real issue now in this proposed labor reform legislation" was the corruption, racketeering and exploitation by dishonest and criminal union officers tending to subvert the right of union memberships "to manage and control their internal affairs by recognized and respected democratic process" (at p. 2286; also reported at I *Leg. Hist. of LMRDA* (NLRB) at 1295).

On the basis of such a legislative history, we submit that it is inconceivable that the limited language of Section 101 (a) (5) can properly be extended to allow the federal courts to override the reasonable, good faith interpretation of union provisions by union memberships and their duly designated officials.[15]

The importance of preserving to unions the right to govern their internal affairs through the reasonable development and enforcement of the "law of the association" is self-evident. To survive as effective instruments of collective bargaining, unions must continue to be free to discipline individual members on the basis of reasonable interpretations of that law. Many unions have provisions similar to the provisions involved in the instant case. If the courts have the power to hold the union to all the legal niceties of judicial procedure, the effective disciplinary

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[15] This Court, in *NLRB v. Allis-Chalmers Mfg. Co., supra* at 194, recognized that Section 101(a)(5) of the Act contains "only procedural requirements to be observed" and indicated that the disciplinary action taken by the union in that case fully comported with those requirements. Note that in *Allis-Chalmers*, discipline was imposed for "strike-breaking" on the basis of a union provision broadly prohibiting "conduct unbecoming a union member."

power of many of these unions—practicably unable to provide such niceties—will be at an end with a consequent in increase in internal disorder and dissension. It is particularly ironical that under a federal labor policy based upon the peaceful adjustment of union-employer relations, a union should have been held incapable of keeping its own "shop" free from the *violent* resolution of disputes.

In the instant case, Braswell was unquestionably afforded fair and impartial procedures. Neither of the courts below questioned this fact nor that the explicit requirements of Section 101 (a) (5) were met. Indeed, far exceeding the remedies usually afforded in judicial proceedings, the initial decision of the local union trial committee was reviewed and sustained at three levels, including the local union membership itself and the governing body of the International. For the courts below to go outside the clear language of the statute and override the union's reasonable determination on the basis of an independent judicial determination as to the "true" meaning of substantive union provisions is clearly not permitted by the statute.[16]

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[16] As noted *supra*, the District Court, unlike the Court of Appeals, indicated that the union could properly have determined that Braswell violated the by-law provision. The difference between the District Court and the Court of Appeals supports the reasonableness of the union determination. We submit that even if the courts below were correct in their construction of Art. XIII, Sec. 1 of the subordinate lodge constitution, there is absolutely no basis under the statute to hold union disciplinary proceedings to the standard of the "special verdict" rule applied by the District Court. *Accord, Burke v. Boilermakers,* 57 CCH Lab. Cas. ¶12, 496 (N.D. Calif. Nov. 8, 1967).

In any event, it is clear that the trial committee did return a "special verdict." Article XIV, Section 2(d) of the subordinate lodge constitution provides that the trial committee shall determine whether the accused is "guilty," "guilty in part" or "not guilty." Braswell was charged under two separate provisions and found "guilty as charged." See PX-1, p. 99; R. 102; PX-4; R. 136; PX-7. The only reasonable conclusion is that the committee's "verdict" was a determination of guilt under each of the provisions.

2. There was substantial evidence presented to the local union trial committee for it to have reasonably found "guilt" under both provisions even *as construed by the Court of Appeals.* Wise's charge against Braswell alleged that Braswell's involvement in the October 5, 1960 episode commenced prior to his physical assault of Wise. According to the charge, Braswell intentionally interfered with the attempt by one Bell to halt the earlier assault by Hardeman precipitated by Hardeman's disapproval of Wise's referral practices (PX-4). Substantial evidence was introduced at the trial committee hearing that Braswell, among others present at the hall on October 5, 1960, was disenchanted by the policies of Wise particularly and the local union generally, and that after Hardeman commenced his violent expression of disenchantment, Braswell indeed interfered on the part of Hardeman so as to prevent a peaceful resolution of the dispute. See "UT" references *supra,* p. 4. Surely, under *any* recognized standard of judicial review, such evidence was more than sufficient to warrant a lower "trial body" finding that, in the words of the Court of Appeals (App. 12), Braswell's acts were a "threat" to the union as an organization and to the effective carrying out of the union's aims" and were intended "to prevent an officer of the union from properly discharging the duties of his office." Particularly is this so where the "trial body" is the union itself and where the appropriate standard of judicial review is, therefore, considerably narrower than in the case of review of a lower court. See *Way* v. *Patton,* 195 Or. 36, 58-59.

Previous discussion (*supra,* pp. 15-17), concerning the language and legislative history of Section 101 (a) (5) is sufficient, we submit, to establish clearly that courts, under that statute, are precluded from substituting their evaluation of the evidence for the union's own reasonable evaluation reached after a full and fair hearing. It should be added that one of the amendments made by the Kuchel Substitute to the McClellan bill of rights was the removal

from that bill of rights of the requirement that the accused member be afforded a "final review on a written transcript of the hearing by an impartial person." This amendment is completely inconsistent with a judicial reevaluation of evidence under Section 101 (a) (5).[17] Furthermore, the common law rule, interpreted most liberally, limits judicial review to case where the union's findings are unsupported by any substantial evidence. Annot., 21 ALR 2d 1397, 1445 (1952).

For the same reasons that unions could not long continue as effective instruments of collective bargaining if their power, in disciplinary proceedings, to construe their own internal laws were removed, they could not so continue if their power to evaluate the evidence presented in the course of such proceedings were similarly removed. To remove this power is essentially to remove the power to internally discipline their members. For the position to which unions have now been relegated by the courts below is that of a court-appointed master, charged with collecting the evi-

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[17] We think a strong argument could be made that, inasmuch as the Kuchel Substitute removed from unions the obligation to maintain a transcript of disciplinary hearings, and since Section 101(a)(5) contains "only procedural requirements to be observed," *supra*, n. 15, Congress obviously did not intend for the federal courts, as distinguished from state common law courts, to engage in *any* review of the evidence, even to the extent of reviewing to see whether there is any evidence to support the union's findings. One federal court of appeals has held, however, that it is proper to review the union record with the limited view of "insur[ing] that the findings are not without any foundation in the evidence." *Vars v. Boilermakers*, 320 F. 2d 576, 578 (2d Cir.).

In any event, it is unnecessary for this Court to pass on this question in the instant case and we need not rely here on this broader argument. Although the Court of Appeals, in the instant case, purported to apply the limited standard of review (App.12), we think it is patently clear that the Court actually applied a much broader standard.

dence so that the federal judiciary may enter their findings theron. Such a result is particularly inappropriate in the instant type of case where, under, the construction adopted by the Court of Appeals, those findings involve determinations as to what constitutes union "aims," threats to a union as an "organization," and the proper discharge of official union "duties." Assuredly, such determinations are basic, substantive organizational policy judgments to be left to the unions themselves in the absence of clear preemptive legislation.

B. Punitive Damages

1. We submit that punitive damages are not available in actions against unions under Section 102 for violation of the rights secured by Section 101 (a) (5).

The accepted rule is that in federal statutorily created causes of action, punitive damages are not available unless specifically provided for by Congress; Congress knows how to provide for such a remedy and has found no difficulty in clearly doing so when such has been its intention. *United Mine Workers v. Patton,* 211 F. 2d 742, 749 (4th Cir.), *cert. denied,* 348 U.S. 824; 17 U.S.C. § 1 (copyright); 35 U.S.C. § 67 (patent); 15 U.S.C. § 15 (antitrust). This rule is particularly pertinent with respect to federal labor legislation generally (Cf. *General Committee v. M.K.T.R. Co.,* 320 U.S. 323, 332-33 (Railway Labor Act); *Teamsters Local 20* v. *Morton,* 377 U.S. 252, 260 (Section 303 of Taft-Hartley); *Republic Steel Corp.* v. *NLRB,* 311 U.S. 7, 10-13) and Section 101 (a) (5) of the Act particularly. The limited language of Section 102 ("for such *relief* as may be appropriate" (emphasis added)); the fact that Congress provided a specific punitive deterrent in the form of a criminal provision (see Section 610, and Section 3 (d) defining "person" to include labor organizations) for deprivation of members'

rights by violence;[18] and, most important, the legislative history of Section 101 (a) (5) discussed *supra,* indicating its limited scope, the overriding purpose of reaching corrupt union officers without weakening unions' structure or their memberships, and the failure to incorporate the full panoply of common law remedies,[19] all point to this result.

What legislative history there is specifically on the issue of remedies confirms the Congressional intent to limit damages against unions to those of a compensatory nature. Thus, the Senate Committee report on the Kennedy-Ervin bill, which, as we have seen, set the tone for the subsequently added Kuchel Substitute states:

> In acting on this bill the Committee followed three principles: 1. . . . In establishing and enforcing statutory standards great care should be taken not to weaken unions in their role as collective bargaining agents... 3. Remedies for the abuses should be direct. Where the

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[18] The Kennedy-Ervin Bill, as it passed the Senate (after the Kuchel Substitute had been adopted) had an additional, specific criminal provision making it unlawful for a "labor organization, its officers, agents, representatives, or employees, to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Act." (Section 607 of S. 1555, I Leg. Hist. of LMRDA (NLRB) at 575-76.) The Landrum-Griffin Bill deleted the criminal penalty and substituted civil enforcement because as stated by Congressman Griffin, ". . . the conduct prohibited by this section is generally comparable to conduct described as an unfair labor practice under the Taft-Hartley Act and, accordingly, we do not believe that criminal sanctions are warranted." II Leg. Hist. of LMRDA (NLRB) at 1522 (1). As noted *infra,* p. 28, the Taft-Hartley unfair labor practice analogy is directly opposed to the idea that the civil relief sections of the Act were intended to encompass punitive damages.

[19] The common law, on the issue of punitive damages in actions involving union discipline, is not uniform. "In some jurisdictions the right to punitive damages has been recognized . . .". Annot., 74 ALR 2d 783, 810 (1960).

law prescribes standards, sanctions for their violation should also be direct. The committee rejects the notion of applying destructive sanctions to a union, i.e., to a group of working men and women, for an offense for which the officers are responsible and over which the members have, at best, only indirect control. Still more important the legislation should provide an administrative or judicial remedy appropriate for each specific problem. S. Rep. No. 187, 86th Cong., 1st Sess. 7 (1959). I *Leg. Hist. of LMRDA* (NLRB) at 403.[20]

The McClellan Bill of Rights provided for civil enforcement by means of a suit by the Secretary of Labor.[21] It is highly unlikely that punitive damages would have been available in such a proceeding. Cf. *Republic Steel Corp.* v. *NLRB*, 311 U.S. 7, 10; *Local 60, United Bhd. of Carpenters*, 365 U.S. 651, 655 (punitive damages not available to the NLRB in proceedings under Section 8 of the Labor Act). The Kuchel Substitute being a softening of the McClellan provisions to guarantee further against judicial encroachments upon union disciplinary proceedings, it is just as unlikely that the Substitute would have added a punitive damage remedy for the first time.

Senator Goldwater, who played a major role in directing the 1959 Act through the Congress, explained the limited remedies available under Section 102 of the Kennedy-Ervin

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[20] This language from the Senate report was quoted with approval, as representative of the Congressional intent, by this Court in *Wirtz v. Local 153, Glass Bottle Blowers Ass'n.*, 389 U.S. 463, 471 n. 10.

[21] Sec. 103. The Secretary, whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, may bring an action in a district court or other court of the United States for such relief as may be appropriate including, but without limitation, injunctions to restrain any such violations and to compel compliance with this title. Any such action against a labor organization may be brought in the United States District Court for the District of Columbia or in the district court or other court of the United States where the violation occurred.

bill subsequent to its approval by the Senate (II *Leg. Hist. of LMRDA* (NLRB) at 1281):

> [T]he nature of the suit is such as to promise, even if successful, little in the way of monetary damages except in the rare case where the plaintiff's job rights or job tenure have been adversely affected. Moreover, the bill does not grant reasonable counsel fees or other costs. . . . It is not unlikely that many of the States, under common law principles, provide him with more effective remedies. Fortunately, these other rights and remedies are preserved by Section 103.

The consequences which punitive damage awards may have on the functioning and stability of labor organizations and collective bargaining are serious indeed. While such awards may often have their severest destructive impact on a weak union, "for which the power to execute union decisions taken for the benefit of all employees is most critical to effective discharge of its statutory function" (*NLRB* v. *Allis-Chalmers, supra* at 184), strong unions will inevitably suffer too for the very fact of their strength will no doubt result in larger assessments. Thus, by arming disputants with the threat of punitive damages, the courts would jeopardize the measure of stability painstakingly achieved in labor-management relations and introduce a potentially disruptive device into the structure carefully created by Congress for resolving disputes involving union discipline without weakening the unions themselves. Nor are punitive damages, assessed against a union for the malicious breach of obligation by individual union officers, the kind of "direct remedies" mentioned by the Senate Committee. Indeed, it would be a distortion of the major purpose of the Act to deplete the treasuries of union memberships for the malicious misdeeds of their officers.

A further danger posed by the availability of punitive damages lies in their *Interrorem* effect. Even though the disciplinary proceedings of a union may subsequently be upheld in a court of law, working men, not wanting to as-

sume or able to predict the risk of a large damage award, necessarily based on subjective factors, will necessarily feel restricted in the conduct of their internal affairs.

2. Alternatively, even if punitive damages may be available against unions in suits under Section 102 and 101(a)(5), the preceding considerations dictate that their appropriateness in specific cases should be determined by the court, not a jury, and depend on whether plaintiff has (1) proved the necessary elements to support those damages, and (2) has suffered some sort of compensable harm as a prerequisite to the recovery of additional punitive damages.

In *Linn* v. *Plant Guard Workers, Local 114*, 383 U.S. 53, this Court held, four justices dissenting, that the National Labor Relations Act does not preempt the maintenance of a common law action for libel committed by a union during an organizing campaign. The Court recognized, however, the importance of not allowing remedies in such actions to defeat the "needs of national labor policy" (383 U.S. at 67). Applying its general powers of supervision, the Court, therefore, held further (383 U.S. at 64-65, 65-66):

> But it has been insisted that not only would the threat of state libel suits dampen the ardor of labor debate and truncate the free discussion envisioned by the Act, but that such suits might be used as weapons of economic coercion. Moreover, in view of the propensity of juries to award excessive damages for defamation, the availability of libel actions may pose a threat to the stability of labor unions and smaller employers. In order that the recognition of legitimate state interests does not interfere with effective administration of national labor policy the possibility of such consequences must be minimized. We therefore limit the availability of state remedies for libel to those instances in which the complainant can show that the defamatory statements were circulated with malice and caused him damage.
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> . . . The fact that courts are generally not in close con-

> tact with the pressures of labor disputes makes it especially necessary that this rule be followed. . . . [T]he defamed party must establish that he has suffered some sort of compensable harm as a prerequisite to the recovery of additional punitive damages.

The anology of this aspect of the *Linn* case to the instant case is very close. Here, too, the threat of punitive damages "truncates" the internal management of union affairs envisioned by the 1959 Act; their availability "poses a threat to the stability of labor organizations"; juries have a "propensity to award excessive damages"; and "courts are generally not in close contact" with the pressures of internal union disputes. The rule laid down in *Linn*, therefore, is just as necessary to cases involving union discipline under Section 101(a)(5) of the 1959 Act. And while *Linn* apparently allows the question of damages in libel suits to go to the jury, we submit it would better serve the purposes underlying that rule to preserve this question to the court in cases under Section 101(a)(5) of Landrum-Griffin. Cf. *New York Times* v. *Sullivan*, 376 U.S. 254, 284-85, where the Court reviewed the evidence to determine whether it could support a finding of actual malice as a matter of law.

The facts of the instant case make the necessity of such a rule very clear. Braswell's suit did not seek reinstatement to union membership[22] but was based entirely on alleged loss of wages resulting from hiring discrimination due to union non-membership. The record in the District Court shows that not only were these allegations, i.e., compensatory damages, unproved but that there was substantial evidence to show that during the years following expulsion, Braswell did not wish to be employed for fear of forfeiting a portion of his social security benefit R. 274). As to the punitive damages themselves, there was a complete

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[22]And it was proved that the allegations concerning the pension and insurance plans were frivolous since participation in those plans did not depend on union membership (R. 284-89).

lack of evidence of malice on the part of the local union or, to be sure, the defendant, International union. On the contrary, all relevant evidence substantiated their good faith. On this record, the District Court, without ruling on whether compensatory or punitive damages had been proved (R. 298-99), left the damage issue to the jury. Indeed, the jury's award, following the court's instructions, fails to distinguish between compensatory and punitive damages and, therefore, makes it impossible to ascertain whether the jury found any compensatory damages at all. Compare *New York Times Co.* v. *Sullivan, supra* at 284.

We submit that such arbitrary and capricious results can best be prevented by precluding the availability of punitive damages in suits based on Section 101(a)(5). Alternatively, this Court should apply to such suits the rule suggested above.

II. The decisions by the courts below on the issue of punitive damages conflict in principle with decisions by this Court and courts of appeals, and directly conflict with decisions by federal district courts.

This court has delimited the availability of punitive damages in suits brought in the federal courts against labor organizations involving labor-management relations. See *Teamsters Local 20* v. *Morton,* 377 U.S. 252, 260 (punitive damages held unauthorized in actions under Section 303 of the Labor-Management Relations Act); *Linn* v. *Plant Guard Workers, Local 114, supra* (punitive damages held authorized in common law actions for libel committed by unions during organizational campaigns only where plaintiff proves actual malice and compensatory damages, see discussion, *supra,* p. 23); *Republic Steel Corp* v. *NLRB,* 311 U.S. 7, 10-13 (punitive damages held unavailable to the NLRB in proceedings under Section 8(a) of the Na-

tional Labor Relations Act). See *Shoe Workers, Local 127* v. *Brooks Shoe Mfg. Co.*, 298 F.2d 277, 278, where the Court of Appeals for the Third Circuit, dividing 5-3 on this issue, held that punitive damages cannot be awarded under Section 301 of Taft-Hartley; *contra, Wanzer* v. *Teamsters Local 753, Milk Drivers*, 249 F. Supp. 664, 668 (N.D. Ill.). There is even more reason for delimiting the punitive damage remedy in suits involving internal union affairs. See discussion *supra*, pp. 24-25.

While courts of appeals other than the Fifth Circuit have not specifically ruled on punitive damages under Section 101(a)(5) of the Act, two courts of appeals have held other remedies unavailable so as to make the unavailability of the punitive remedy an *a fortiori* proposition. *Boilermakers* v. *Rafferty*, 348 F. 2d 307, 315 (9th Cir.) (damages for emotional distress held unavailable under Section 102); *McCraw* v. *United Association*, 341 F. 2d 705, 710 (6th Cir.), affirming, 216 F. Supp. 655, 662, 664 (E.D. Tenn.) (allowance of attorney's fees not authorized under Section 102).[23] See also *Keenan* v. *Metropolitan District Council of Philadelphia*, 266 F. Supp. 497 (E.D. Pa.) (damages for mental anguish and loss of reputation not allowable).

Finally, several federal district courts have specfically held that punitive damages may not be awarded in suits under Sections 102 and 101(a)(5), *Nix* v. *Fulton, Lodge 2, Machinists*, 262 F. Supp. 1000, 1008 (N.D. Ga.); *Magelssen* v. *Local 518, Operative Plasterers*, 240 F. Supp, 259, 263 (W.D. Mo.); *Burris* v. *Teamsters*, 224 F. Supp. 277, 280 (W.D. NC.); *Cole* v. *Hall*, 35 F.R.D. 4, 7-8 (E.D. N.Y.). *Contra, Farowitz* v. *Assd. Musicians of Greater New York, Local 802*, 241 F. Supp. 895, 909 (S.D. N.Y.); *Barbour* v. *Sheet Metal Workers Intl.*, 263, F. Supp. 724, 727 (E.D. Mich.).

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[23]The courts in *McCraw* held that in actions under Sections 101 (a) and 102 of the Act, damages must be limited "to those which directly and proximately resulted from the alleged violation of the Act...." *Ibid.*

CONCLUSION

The importance of the issues presented, the arbitrary nature of the decisions in the instant case, and the conflict in decision and principle among federal courts with respect to the issue of punitive damages are compelling reasons for the granting of review by this Court. For the foregoing reasons, we respectfully submit that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 23776

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS,

Appellant,

versus

E. T. BRASWELL,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA.

(January 12, 1968.)

Before WISDOM and GODBOLD, Circuit Judges, and McRAE, District Judge.

WISDOM, Circuit Judge: In this action against the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO, the plaintiff, E. T. Braswell, alleges that he was wrongfully

expelled from the Union. He asserts that this expulsion was in violation of his rights under the "Bill of Rights of Members of Labor Organizations" of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 401 et seq. He relies particularly on 29 U.S.C. § 411(5):

> (5) Safeguards against improper disciplinary action.—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) given a full and fair hearing.
>
> (b) any provision of the constitution and by-laws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect.

Braswell seeks compensatory and punitive damages only, and not reinstatement. The jury returned a verdict in favor of the plaintiff in the amount of $12,500, and the Court entered a judgment in that amount. The Union appeals. We affirm.

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Braswell had been a member of the International since 1909, and at the time of his expulsion was a member in good standing of Local 112 in Mobile, Alabama. In the fall of 1960 there was considerable dissension in the Union over the local business manager's allegedly discriminatory assignment of jobs.[1] On October 5, 1960, the business manager, Herman B. Wise, after reading his morning mail, left his office for a local plant where he intended to engage in union business. As he walked out, George Hardeman, one of the members of the Union, met him, handed him a telegram and asked Wise, "Can you explain this to me". Before Wise could finish reading it, Hardeman struck him in the

face. Several other members were "standing around". One clutched at Hardeman, but another threatened to "drop him in his tracks" if he did not release Hardeman. Braswell took no part in the actual fighting but remarked to the man holding Hardeman, "You keep your hands off of him." The police were called. As Wise recounted the incident to a police officer, he pointed to Braswell and said, "And this man was standing here." At this point Braswell struck Wise in the face, breaking his nose.

Wise charged Braswell, Hardeman, and another member with violations of Article 13, Section 1 of the Subordinate Lodge Constitution [2] and Article 12, Section 1 of the Subordinate Lodge Bylaws.[3] A local trial panel conducted a

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[1] The cronology of events is unclear in the record and in the briefs; the parties are not in agreement as to any of the dates. We have tried to reconstruct the sequence from the testimony offered at the trial, insofar as possible. Any inaccuracies, however, are not relevant to the issues before this Court.

[2] Article XIII, Section 1:

"Any member who endeavors to create dissention among the members; or who works against the interest and harmony of the International Brotherhood or of any District or Subordinate Lodge; who advocates or encourages a division of the funds, or the dissolution of any District or Subordinate Lodge, or the separation of any District or Subordinate Lodge from the International Brotherhood; who supports or becomes a member of any dual or subversive organization which shall be hostile to the International Brotherhood or to any of its Subordinate Lodges, or which is antagnostic to the principles and purposes of the International Brotherhood, shall upon conviction thereof be punished by expulsion from the International Brotherhood."

[3] Article XII, Section 1:

"In addition to the offenses and penalties set out in the applicable provisions of the International and Subordinate Lodge Constitution, the following offenses and penalties shall be observed in this Subordinate Lodge, and any member who violates same shall, if found guilty after proper hearing as provided

hearing on the charges, found Braswell guilty, and ordered his expulsion. Upon the recommendation of the Union Board the members approved the verdict. He appealed to the Executive Council of the International Union. After another hearing, the Council affirmed the decision of the trial board. Braswell made a final appeal to the President of the International. This appeal was also rejected. He was then formally expelled from the Union. None of these decisions states whether it is based on both or only one of the violations charged. On September 12, 1963, Braswell filed an amended complaint in the district court alleging that the expulsion was wrongful under LMRDA and asking for damages.

I.

Jurisdiction

The Union challenges the jurisdiction of the district court over the subject matter on the ground that the National Labor Relations Act, 29 U.S.C. § 151 et seq., preempted the cause of action.

There may be certain ambiguities in LMRDA, but the act does unequivocably state that the rights secured by the bill of rights are to be enforced through private suits and that such suits shall be brought in the district courts.[4] Section 102 of the LMRDA, 29 U.S.C. § 412, provides:

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herein, be punished as warranted by the offense. "(1) It shall be a violation of three By-Laws for any member through the use of force or violence to restrain, coerce or intimidate, or attempt to restrain, coerce or intimidate any official of this International Brotherhood or Subordinate Lodge to prevent or attempt to prevent him from properly discharging the duties of his office.

[4] Earlier versions of the legislation had provided for enforcement of the bill of rights by the Secretary of Labor and for criminal penalties for the unions and union officials who committed such violations of their provisions. In the final version, Congress left

> Civil action for infringement of rights; jurisdiction: Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

At the same time, under Section 103, 29 U.S.C. § 413, union members retain whatever rights and remedies they may have "under any State or Federal law or before any court or other tribunal, or under the Constitution and Bylaws" of their unions.

The Union relies on *San Diego Building Trades Union v. Garmon*, 1959, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775. In *Garmon* the Court held:

> "When an activity is *arguably* subject to § 7 and § 8 of the [National Labor Relations] Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted." 359 U.S. at 245. (emphasis added).

The Union suggests that the expulsion of Braswell was *"arguably"* an unfair labor practice under the NLRA, and that exclusive jurisdiction therefore lies with the NLRB. This assertion is erroneous on two counts.

First, the purpose of the *Garmon* rule is to prevent conflicts between federal and state policy. Here, if there is any conflict at all, it is between two federal organs expressing

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enforcement of these rights entirely to private suits. See Rothman, *Legislative History of the "Bill of Rights" for Union Members*, 45 Minn. L.Rev. 199, 216-17 (1960).

federal policy, and Congress has declared that federal courts, and not the National Labor Relations Board are to have the primary role. "Garmon . . . merely rationalizes the problems of coexistence between federal and state regulatory schemes in the field of labor relations. . . . The purpose of Congress is the ultimate touchstone." *Retail Clerks International Association v. Schermerhorn,* 1963, 375 U.S. 96, 103, 94 S.Ct. 219, 11 L.Ed.2d 179.

Second, the cause of action here involved is not arguably subject to the jurisdiction of the Board. Where a dispute is solely between the member and his union and does not directly concern rights granted by the NLRA, the preemption doctrine does not come into play. *International Association of Machinists v. Gonzales,* 1958, 356 U.S. 617, 78 S.Ct. 923, 2 L.Ed.2d 1018; *Local 100, United Association of Journeymen and Apprentices v. Borden,* 1963, 373 U.S. 690, 83 S.Ct. 1423, 10 L.Ed.2d 638; *Local 207, International Association of Bridge, Structural and Ornamental Iron Workers Union v. Perko,* 1963, 373 U.S. 701, 83 S.Ct. 1429, 10 L.Ed.2d 646. See also *Vaca v. Sipes,* 1967, 386 U.S. 171, S.Ct. , 17 L.Ed. 2d 842.

The question is one of congressional intent—did Congress intend to give the NLRB exclusive primary jurisdiction over the subject matter? In both *Borden* and *Perko* the Court answered "yes". But neither the preemption doctrine nor the primary jurisdiction doctrine has constitutional bases. A clear indication therefore of congressional intent to confer jurisdiction on the federal district courts to award damages for actions—even if these actions were arguably violations of the NLRA and within the jurisdiction of the NLRB—would control.[5]

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[5] For many years, before the passage of LMRDA, state courts heard suits by union members against their unions alleging that they had been unfairly disciplined or expelled. See Summers, *The*

The result is in accord with other federal courts which have passed on the question. See *Addison v. Grand Lodge of International Association of Machinists*, 9 Cir. 1962, 300 F.2d 863; *Parks v. International Brotherhood of Electrical Workers*, 4 Cir. 1963, 314 F.2d 886, 922-3, cert. denied, 372 U.S. 976; *Rekant v. Shohtay-Gasos Union Local 446, Amalgamated Meat Cutters and Butcher Workmen of North America*, 3 Cir. 1963, 320 F.2d 271, 273-75; *Grand Lodge of International Association of Machinists v. King*, 9 Cir. 1964, 335 F.2d 340, 346-47; cert. denied, 379 U.S. 920; *Burns v. United Brotherhood of Carpenters and Joiners of America, Local 626*, D. Del. 1962, 204 F. Supp. 599, 601-02.[6]

The appellant's attempt to argue that the conduct of which appellee complains constitutes an unfair labor practice (coercion of an employee in the exercise of his rights or of an employer to discriminate) is of no relevance. Even if the conduct is arguably subject to the NLRA (which is doubtful), it is *also* a violation of the LMRDA Act. A clear Congressional directive that federal courts have jurisdiction to entertain suits for damages has precedence over application of the primary jurisdiction rule. We hold that the district court had jurisdiction of this action under Section 412.[7]

Law of Union Discipline: What the Courts do in Fact, 70 Yale L.J. 175 (1960). There is nothing here to indicate an unfair labor practice under the NLRA that would bring the Garmon doctrine into play.

[6] In Barunica v. United Hatters, Cap and Millinery Workers, Local 55, 8 Cir. 1963, 321 F.2d 764, a complaint alleging that the union had unlawfully failed to refer the plaintiff out on employment was dismissed as not stating a cause of action under LMRDA, the court noting that it was properly an unfair labor practice cognizable before the NLRB. See Thatcher, Rights of Individual Union Members Under Title I and Section 610 of the Landrum-Griffin Act, 52 Georgetown L.J. 339, 361-62 (1964).

[7] The very union which is appellant here has defended other suits

II.

Jury Trial

In his amended complaint, Braswell demanded a trial by jury. The Union made a timely motion to strike this demand. The district court denied the motion, and the case was heard and decided by a jury. The Union renews here its objection to the jury trial.

The Act itself does not indicate whether a jury trial is to be granted for suits under Section 412. The language of the jurisdictional grant, that "such relief (including injunctions) as may be appropriate" may be afforded indicates that Congress contemplated the entire range of remedies, both legal and equitable. Braswell sought only damages; he did not ask to be reinstated in the Union which had expelled him. In traditional terms, then, his cause of action was purely "legal" in nature.

We find only two federal cases on the question whether a jury trial is required in an action for wrongful expulsion under LMRDA. In *McCraw v. United Ass'n of Journeymen and Apprentices,* 1965, 341 F.2d 705, 709-10, the Sixth Circuit held that a section 412 proceeding was one unknown at common law, and therefore not within the guarantee of the Seventh Amendment. The court characterized the proceeding as one in equity for reinstatement, with damages merely an incident to relief, and therefore held that a jury trial was not proper. In *Simmons v. Avisco, Local 713, Textile Workers Union of America,* 1965, 365 F.2d 1012, the Fourth Circuit rejected the *McGraw* holding. Judge Sobeloff, for

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brought under the jurisdiction of § 412. Vars v. International Brotherhood of Boilermakers, D. Conn. 1962, 205 F. Supp. 943 *affirmed,* 2 Cir. 1963, 320 F.2d 576; International Brotherhood of Boilermakers v. Rafferty, 9 Cir. 1965, 348 F.2d 307.

the Court, held that although LMRDA created new rights, and the cause of action was partly equitable, the plaintiff did not lose the right to a jury trial:

> The right asserted is indeed one created by statute, but we do not agree that a jury trial is necessarily unavailable because the suit for damages is one to vindicate a statutory right. There is no such cleavage between rights existing under common law and rights established by enacted law, where the relief sought is an award of damages. [citing cases and authorities]
>
> The plaintiff here is suing at both law and in equity. He seeks an injunction to effect his restoration to membership. He also seeks money damages for injury to reputation, and resulting mental anguish—a cause of action of which the developing common law of torts certainly takes cognizance. We see no reason for not allowing a jury to determine whether the union's wrongful conduct was the proximate cause of the plaintiff's injuries and how much the plaintiff is entitled to recover therefor. . . . Where issues underlying equitable and legal causes of action have been exactly the same, the Supreme Court has been careful to preserve a litigant's right to jury trial on the factual issues, even where a stronger basis was presented for equitable than for legal relief. See *Dairy Queen v. Wood,* 1962, 369 U.S. 469, 473, 82 S.Ct. 894, 8 L.Ed.2d 44; *Thermo-stich, Inc. v. Chemi-Cord Processing Corp.,* 294 F.2d 486, 491 (5th Cir. 1961).

We find Judge Sobeloff's reasoning persuasive. We need not decide, however, whether a plaintiff is always entitled to a jury trial in a section 412 action seeking both legal and equitable relief. Here, where the plaintiff prays for money damages only, the action cannot be characterized as one for reinstatement with money damages as incidental. Here he should be entitled, at his request, to have a jury determine whether the Union's wrongful conduct was the proximate cause of his injuries and the amount of his damages. The district court correctly denied the Union's motion to strike the jury trial demand.

III.

The Expulsion

Braswell does not deny that he struck Wise in the face and broke his nose. The question is whether this act constituted a violation of the Union Constitution and Bylaws that would justify his expulsion.[8] As noted, the Union charged Braswell with violations of two provisions, set out in footnotes 2 and 3. The union trial board simply returned a general verdict of guilty, without specifying whether Braswell violated both or only one of the sections. Since expulsion is mandatory under Article XIII, Section 1 and is also permissible under Article XII, Section 1 of the bylaws if warranted by the offense, the penalty affixed is of no help in determining the scope of the trial board's finding.

The district court found as a matter of law that there was no evidence to support a finding of guilt under Article XIII of the Constitution. For reasons to be stated, we agree with this finding. The district court declined to rule on whether Braswell violated Article XII of the bylaws, because there was no evidence in the record that the expulsion rested upon a "convicition" under that article. In view of the invalidity of the first charge and the failure to specify by the union

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[8] Section 101(a)(5) of the LMRDA provides that, except for non-payment of dues, no union member may be "suspended, expelled, or otherwise disciplined" unless he has been "(A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing." Several of the twelve counts in Braswell's amended complaint alleged procedural defects in the manner of selection of the union trial board, the notice given to Braswell of the trial, the manner in which the hearing was conducted, and domination of the trial board by Wise, the complainant. The trial court ruled against Braswell on several of these, and did not formally rule either way on others. As Braswell took no exception to these rulings below, and does not contest them here, these matters are not before this court.

board, Braswell was prejudiced in his defense and appeal and the expulsion was therefore invalid. While such lack of specificity might constitute a violation of the administrative due process guaranteed by Section 411(5), we reach the same result on the ground that, under the authorities, Braswell's expulsion was not valid under either provision mentioned in the charges. "[A] union cannot discipline its members except for offenses stated in its constitution and by-laws and . . . courts lack the power to recognize 'implied offenses' and thereby rewrite the union's constitution." *Simmons v. Local 713*, 350 F.2d 1012 (4th Cir., 1965).

This Court dealt with a very similar question recently in *Allen v. International Alliance of Theatrical, Stage Employees and Moving Picture Operators*, 5 Cir. 1964, 338 F.2d 309. Allen was expelled from his union on a charge that he had violated a provision of the constitution which, by its terms was inapplicable to him. The evidence, however, established that he was guilty of violating another provision of the constitution, but he was not charged under that provision. In affirming the judgment of the district court, finding the expulsion unlawful and awarding reinstatement and damages, we stated:

> "It is well established that penal provisions in union constitutions must be strictly construed. In McCraw v. United Ass'n of Journey [sic] & App. of Plumbing etc., Inc., [sic] E.D.Tenn, 1963, 216 F.Supp. 655, 662, a decision under the Landrum-Griffin Act, the Court pointed out: 'In determining whether discipline was properly imposed *** any ambiguity or uncertainty in the constitution must be construed against the union and in favor of the member, in accordance with well established principles of documentary construction.' " 338 F.2d at 316.

Here, as in *Allen*, we also rely on *Vars v. International Brotherhood of Boilermakers*, 2 Cir. 1963, 320 F.2d 576, 578. There the court observed:

> "[I]mplicit in the requirement of a full and fair hearing is the requirement that there be some evidence to support the charges made. . . . Thus, although the courts may be without power to review matters of credibility or of strict weight of the evidence, a close reading of the record is justified to insure that the findings are not without any foundation in the evidence."

Applying these principles to the undisputed underlying facts we find that the act charged to Braswell was a blow struck in anger, and nothing more. However reprehensible this act may be, it did not constitute a violation of the provisions in the charges. Article XIII, Section 1 of the constitution on its face is directed at threats to the union as an organization and to the effective carrying out of the union's aims. Braswell's fist was not such a threat. Article XII, Section 1 of the bylaws proscribes the use of force or violence where the purpose of such force is to prevent an officer of the union "from properly discharging the duties of his office." There is no evidence that Braswell was motivated by this purpose when he struck Wise. Accordingly, we affirm the ruling of the district court that the expulsion was unlawful under Section 411(5).

IV.

Compensatory Damages

The trial judge charged the jury that if it found that Braswell had suffered any actual damages as a proximate result of his unlawful expulsion, he should be awarded an amount to compensate him for such loss. Compensatory damages are proper relief for an unlawful expulsion under LMRDA. See *Simmons v. Avisco, Local 713, Textile Workers Union,* 4 Cir. 1965, 350 F.2d 1012. As the jury was instructed also on punitive damages, discussed below, and brought in a general verdict, without stating what

amounts were allotted to the two types of award, we must assume that some part may have been compensatory. The Union asserts that there was insufficient evidence on the record to support an award of compensatory damages. It is true that Braswell's claim that he lost union insurance and welfare rights was sufficiently countered by testimony and documents showing that he was not eligible, even had he remained a member, but there was testimony regarding the average earnings of a boilermaker, that non-union members would find difficulty in securing work, and regarding Braswell's earnings before and after his expulsion, from which the jury might have found that he was damaged. We find no fault with the instructions regarding compensatory damages.

V.

Punitive Damages.

The trial judge also instructed the jury that if it found that the Union had acted with "actual malice or wreckless or wanton indifference to the rights of the plaintiff" it might award punitive damages; that such damages were a punishment to the wrongdoer to be related to the gravity of the wrong; and that such damages were unrelated to the award of compensatory damages. We agree that this was a correct statement of the law of punitive damages and that there was sufficient evidence for the jury to find that the Union had acted with malice or wanton indifference. The Union contends, however, that LMRDA does not permit the award of punitive damages under any circumstances. As the jury brought a general verdict, and as the evidence regarding actual damages was slight, we cannot assume that no punitive damages were awarded, and we therefore consider this contention.

We have been able to find nothing in the legislative history of LMRDA which touches directly on this question. Three reported decisions, all in district courts, discuss the point. *Burris v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers,* W.D.N.C. 1963, 224 F. Supp. 277, 280-81 and *Cole v. Hall,* E.D.N.Y. 1964, 35 F.R.D. 4, 8, affirmed on other grounds, 2 Cir. 1965, 339 F.2d 881 held that the Act did not permit punitive damages,[9] *Farowitz v. Associated Musicians of Greater New York, Local 802,* S.D.N.Y. 1965, 241 F. Supp. 895, 909, held that it did.[10]

The jurisdictional provision, Section 412, permits the granting of "such relief . . . . as may be appropriate." We do not agree with the court in *Cole v. Hall* that the use of the word "relief" necessarily rules out punitive damages which are strictly speaking not in the nature of relief. We feel it to be appropriate therefore to look to the purposes of LMRDA, and particularly the "Bill of Rights" section to determine whether the granting of punitive damages would serve to best effectuate those purposes.

In the statutory statement of findings and purposes of LMRDA Congress declares that there are instances of unions' "disregard of the rights of individual employees" and that it "is necessary to eliminate or prevent improper practices on the part of labor organizations . . ." 29 U.S.C. § 401. The awarding of punitive damages in appropriate cases serves as a deterrent to those abuses which Congress sought to prevent.

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[9] *Cf.* McCraw v. United Ass'n of Journeymen & App. of Plumbing, etc. 216 F. Supp. 655, 662-63.

[10] Of course, the district court in this case permitted punitive damages, and the district court in Allen v. International Alliance of Theatrical Stage Employees and Moving Picture Operators, 5 Cir. 1964, 338 F.2d 309, sitting without a jury awarded punitive damages, see *id.* at 314. The question was not raised on appeal in that case.

The state courts, and particularly those of New York have had considerably more experience in curbing abuses in the internal affairs of unions than have had the federal courts in the few years since the passage of LMRDA. It is not inappropriate for the federal courts, in exercising their newly granted jurisdiction to look to this expertise as a guide. "The experience of state courts, both their successes and their failures, can provide helpful guides in devising remedies to make the statutory rights effective." Summers, The Law of Union Discipline: What the Courts do in Fact, 70 Yale L. J. 175, 177 (1960). With this in mind, we find persuasive the statement of the New York Supreme Court, Appellate Division, in *Fittipaldi v. Legassie*, 18 A.D. 2d 331, 239 N.Y.S.2d 792, 796:

> "Strong reasons of policy promote the use of exemplary damages to deter union officials from conduct designed to suppress the rights of members to a fair and democratic hearing on legitimate disciplinary charges. The very basis for the existence of unionism in our society today is the promise of employment to those who desire to associate freely in order to obtain it. The right of the working man to the benefits of collective bargaining is too essential and valuable to be hindered, impeded and seriously damaged by irresponsible and dictatorial leaders whose dominance in any given situation does great disservice to the purpose and principles of unionism. When that right of free association is usurped by a concerted, malicious effort to deprive the individual of the safeguards built into the organization, it cannot be condoned. . . . Imposition of exemplary damages, when the requisite elements of malice, gross fraud, wanton or wicked conduct, violence or oppression are present, serves to achieve the deterrence they were designed to effect."

We hold that the district court did not err in instructing the jury that it might award punitive damages. As in all

remedial legislation, LMRDA should be liberally construed to effectuate its purposes.[11]

For the reasons stated, the judgment of the district court is

AFFIRMED.

[11] *Cf.* Simmons v. Avisco, *supra*, 350 F.2d at 1018, 19, where the court upheld an award of $15,000 in damages to compensate the plaintiff for injury to reputation and resulting mental anguish caused by his unlawful expulsion from the union.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1314

International Brotherhood of Boilermakers,
Iron Shipbuilders, Blacksmiths, Forgers
And Helpers, Petitioner

v.

E. T. Braswell, Respondent

BRIEF OF RESPONDENT IN ANSWER TO PETITION FOR CERTIORARI

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v.

E. T. Braswell, Respondent

BRIEF OF RESPONDENT IN ANSWER TO PETITION FOR CERTIORARI

SUMMARY OF ARGUMENT

A. UNLAWFULNESS OF EXPULSION

Respondent was unlawfully expelled from the union by the trial board since they found him guilty of a charge without any evidence to support this charge. He was also found guilty of another section of the union by–laws which was a broad and general section which did not charge any specific offense but was a catch all provision. Finding him guilty of either or both of these sections denied him a fair hearing as required by Section 101 (a) (5) of LMRDA.

Respondent further submits that he was denied a fair hearing by the trial board due to the fact that his punishment was grossly excessive for the offense he might have been guilty of if he had been properly charged.

For these separate and several reasons, respondents expulsion was unlawful since it deprived him of a fair hearing within the meaning of LMRDA.

B. PUNITIVE DAMAGES

Respondent contends that punitive damages are allowable under LMRDA when a member is wrongfully disciplined with malice or wanton indifference to his rights. This is within the broad wording of the act "as may be appropriate." It fulfills the intentions of congress to prevent wrongful discipline by providing a deterrent when such wrongful discipline is used with malice or wanton indifference as opposed to an honest mistake.

LMRDA creats a cause of action for tortious conduct.

Surely congress was not ignorant of common law torts when they created this cause of action for "such relief as may be appropriate." Punitive damages are appropriate when a tort is accompanied with malice or wanton indifference to the rights of another.

The use of punitive damages is well grounded in this type of action. There are very few federal cases on this point but many states have used punitive damages when they have recognized similar causes of action.

Punitive damages are also necessary for wrongful discipline other than expulsion where compensatory damages would be difficult to prove. To deny them would destroy the purpose of the act in creating a remedy for wrongful discipline.

Strong reasons of public policy demand that punitive damages be allowed under LMRDA to promote the freedom of individual union members within the organizations and protect the democracy of such organizations. To deny this type of damage would impair the democracy of labor organizations and subject the individual members to petty tyrants thereby weakening the labor movement in this country.

Petitioners argument against punitive damages asserting that they will weaken the structure of unions and have a bad "Interrorem" effect is unreal. Unions need not fear punitive damages so long as they reasonably attempt to afford their members fair disciplinary proceedures. Should jury verdicts be excessive or prejudicial, trial courts and appellate courts have authority to reduce these verdicts.

The evidence in the instant case was ample that the petitioner wrongfully expelled the respondent with malice or

wanton indifference to his rights and therefore the District Judge properly instructed the jury on punitive damages.

REASONS FOR DENYING WRIT

1. The decisions by the court below represent a fulfillment of the legislative intent and substantially strengthen the life of labor organizations throughout the country.

2. The decisions by the courts below on the issue of punitive damages fulfilled the intent of congress and are in harmony with the principles of this court in establishing democracy and the freedom of the individual.

3. The decisions of the courts below on the issue of punitive damages do not conflict with the decisions of this Honorable Court nor are they in conflict with any Circuit Court of Appeals decision, but follow traditions and principles of old established law.

ARGUMENT OF RESPONDENT

1. A. UNLAWFULNESS OF THE EXPULSION

Petitioner argues the question of the lawfulness of the expulsion which seems to cover questions 1 and 2 in the section of his brief marked Questions Presented. In the questions presented section, the petitioner questions 1, whether or not a court may substitute its interpretation of a unions constitutional and by–law provisions for the interpretation of duly designated union members and officers and 2, whether the court may substitute its evaluation of the evidence submitted to duly designated union members and officers of the union.

Respondent contends that these questions do not apply to what the trial court did in the instant case. Respondent contends that the court did not substitute its judgment unreasonably for that of the trial board. The trial court took the position that it could not retry the issues before the trial board and that it could only examine the transcripts taken before the union trial board as an Appellate Court would examine the evidence of a trial court below, i.e. to see if there was evidence to support the charge.

Section 101 (a) (5) of the Labor Management Reporting and Disclosure Act requires this. That section is set out as follows:

> Safeguards Against Improper Disciplinary Action – No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A)

> served with written specific charges: (B) given a reasonable time to prepare his defense: (C) afforded a full and fair hearing.

Section 101 (a) (5) (C) demands that a trial court examine the proceedings of the board to see if there was any substantive evidence to support the charge. The requirement in the above section of a full and fair hearing includes the fundamentals of due process of law that a person charged with an offense cannot be found guilty unless there is some evidence before the trial board to support a finding of guilt under the charge. This is what the trial court did. (R295,296)

The trial judge's ruling is well supported by decisions of other courts under the Labor Management Reporting and Disclosure Act. The other cases which have so ruled are the following, Phillips v. Teamsters Local 560, 209 F. Supp. 768; International Association of Machinists, Etc. Et al v. Freedman, 252 F. 2d 846; and Vars v. Boilermakers, 320 F. 2d 576. These decisions primarily held that the trial court could not set aside a finding by a union trial board if there was evidence to support its verdict. However these courts also held that implicit in the requirement of the full and fair hearing is the requirement that there be some evidence to support the charge that the individual was found guilty of. The Second Circuit Court of Appeals expressed the doctrine of review in Vars v. Boilermakers, 320 F. 2d 576 as follows:

> "Both parties agree that in an action of this kind, judicial review of the findings of the Union tribunal is limited in nature. . . However, implicit in the requirement of a full and fair hearing is the requirement that there be some evidence to support the charges made. Cf. Madden v. Atkins, 4 N.Y. 2d 283, 174 N.Y.S. 2d 633, 161 N.E. 2d 73, 74 A.L.R.

> 2d 772, 41 LRRM 2491 (1958). If Section 101 (5) is to provide any measure of protection for the individual union member who finds himself beseiged by the full power of the International Union, some review is necessary in order to protect such members from obvious abuses. This is especially true in cases such as this where the hearing examiner is not an independent figure divorced from union controversies but is an officer of the International Union. Thus, although the courts may be without power to review matters of credibility or of strict weight of the evidence, a close reading of the record is justified to insure that the findings are not without any foundation in the evidence."

The ruling of the trial court in the instant case we submit follows this doctrine.

Respondent further submits that the union trial board brought in a general verdict of guilty under both charges. (R. 297) This being the case, it is presumed that the verdict of guilt referred to both sections which the respondent was charged with. It is worthy to note that under Article XIII, Section 1 of the Subordinate Lodge Constitution expulsion is mandatory. Under the general verdict of the union trial board the respondent was found guilty of this section.

The other charge which the respondent was charged with before the union trial board was Article XII, Section 1 of the by–laws which is set out on page 5 of the petitioners brief. It is worthy to note that the trial court did not rule on the question of whether or not the respondent could have been found guilty under the evidence before the trial board under

the charge brought under Article XII, Section 1 of the by-laws. (R. 296) However the Court of Appeals did rule that the respondent could not have been guilty under this section too. Respondent submits that the Court of Appeals was correct in so ruling. Article XII, Section 1 seems to be a catch all article. It would be a violation of a full and fair hearing as required under the LMRDA to find a member guilty under such a catch all provision. A "Union cannot discipline its members except for offenses stated in its constitution and by-laws and * * * courts lack the power to recognize "implied offenses" and thereby rewrite the unions constitution." Simons v. Local 713, 350 F. 2d 1012 (Fourth Cir., 1965)"

However even if this court should not agree with the Circuit Court of Appeals conclusion of a finding of guilt under Article XII, Section 1 would violate the act, it would not be sufficient reason to grant certiorari since the general finding of guilt referred to Article XIII, Section 1 and there certainly was not any evidence to support this charge.

Article XIII, Section 1, clearly refers to someone engaging in some sort of activity of sedition against the union. Someone who would be working to cause a conspiracy to dissolve the union. This section cannot in anyway be construed to cover an offense when one of the members becomes involved in a personal fight with one of the officers of the union.

Your respondent submits further to this Honorable Court that in effect, the union trial board did the same as if a person were indicted under a criminal charge of rape, the evidence proved him guilty of only a simple assault, but yet the trial court convicted him of the crime of rape. This is exactly what the union trial board did when they found the respondent guilty under Article XIII, Section 1 of the

Subordinate Lodge By–laws.

Therefore the respondent contends that his expulsion from the union was unlawful under the meaning of Section 101 (A) (5).

Petitioner goes into great dissertation in his brief concerning his interpretation of the history of the Labor Management Reporting and Disclosure Act. It takes the position that the trial court and the Circuit Court of Appeals decided to retry the issues that were presented before the trial board. The evidence indicates otherwise. The transcript of the trial court shows that the trial judge did not do this. That he merely interpreted the proceedings of the trial board to see if there was substantive evidence to support the charge of guilt. The Court of Appeals did not do this either but found as the trial court did that there was no substantive evidence to support the charges.

Whatever the legislative history of the act is, the meaning of a "full and fair hearing is definite." No one can call a hearing "fair" if there is no evidence to support a charge of guilt. Perhaps if the evidence had been slight to support such a charge, even if not overwhelming, this would have at least supported the charge of guilt. However there was no evidence before the board to support the charge under Article XIII, Section 1 of the Subordinate Lodge Constitution.

Respondent does not contend that Braswell should not have been disciplined for his action in striking the business agent of the union. Of course a labor union must exercise discipline amoung its members in some manner in order to preserve order and to accomplish its aims the same as any other organization. However, in the instant case, the respondent was charged with and found guilty of something which did not apply to his offense.

Respondent would go further than either the District Court or Court of Appeals. I contend that it would be a violation of a full and fair hearing to expel him from the union even if he had been properly charged with charges which would have conformed to the evidence of his act. The harshest disciplinary action which a union could meet out is expulsion from its membership. In criminal law it would be likened to the death penalty. The evidence before the trial court indicates that expulsion from the union effectively means termination from the trade since it is necessary to belong to the union in order to effectively find work. (R. 194, Dobsons testimony as to the importance of being a member of the Boilermakers Union to find work in the trade as well as R. 210–211 testimony by Mr. Hardeman, a boilermaker wno was also expelled in these proceedings).

We could not say in criminal law that it would be a full and fair hearing to give someone the death penalty, or twenty years in the penitentiary for running a red light. The punishment does not fit the crime and it is therefore a violation of fundamental due process. So too, the requirement of a full and fair hearing, required fundamental due process. Striking a business agent in a personal fight is surely not such an offense that expulsion would fit the crime. Therefore the respondent contends that the expulsion of Mr. Braswell in the instant case was unlawful and a violation of the requirement of a full and fair hearing for the separate and several reasons heretofore set forth.

B. PUNITIVE DAMAGES UNDER L.M.R.D.A.

Respondent submits that punitive damages are recoverable under the L.M.R.D.A. when the evidence shows malice or reckless or wanton indifference to the rights of the member wrongfully disciplined. The pertinent parts of Title 29,

Section 412 relative to this are as follows:

> "Any person whose rights secured by the provisions of this sub–chapter have been infringed by any violation of this sub–chapter may bring a civil action in a District Court of the United States for such relief (including injunctions) as may be appropriate." (italics added)

The above quoted section does not rule out punitive damages as an element of damages in such a suit brought under the Landrum–Griffith Act. I submit that the question of "relief as may be appropriate" referred to in this sub–chapter also includes punitive damages. On the trial of a case, if it appears that the action of the union was wilful, or wanton, then punitive damages would be appropriate.

The purpose of the act is to protect the rights of union members from wrongful discipline. In order to do this punitive damages are certainly necessary and appropriate. I further submit that protection for wrongful discipline, would also imply punishment for wilful wrongful discipline. I therefore submit, that if the evidence warrants, this section would allow the plaintiff to be entitled to punitive damages in such amount as the jury may assess in order to accomplish the aims and purposes of the act.

The classic reason for allowing punitive damages in any suit is the deterrent factor. The doctrine rests upon the theory that allowing punitive damages in a specific type of suit will discourage the type of wrongful action upon which suits are brought. To rule that punitive damages are not recoverable under the L.M.R.D.A. would be to thwart the intention of congress of protecting the individual laborer in the United States from wrongful discipline by his union.

I further submit to this Honorable Court that when congress passed L.M.R.D.A. it created an action for a tort. Traditionally the type of suit which is considered a tort is one wherein an individual or legal entity has wronged another individual or legal entity which does not arise out of contract. I submit further, that when congress created this cause of action it had in mind the doctrines that have developed in the common law regarding damages allowed in tort action. The essence of the concept of "tort" is that of a wrongful act. Surely wrongful discipline is a wrongful act. L.M.R.D.A. provides the remedy for such a wrongful act. To hold that punitive damages are not recoverable where malice or wanton indifference is present, is to hold that longstanding principals of tort are excluded under this act; to so hold would make a mockery of the old maxim, "for every wrong there is a remedy." To hold that congress did not intend punitive damages to be an element of damages where wantoness or wilfulness exists is to hold that the greatest law making body on earth is ignorant of the basic fundamentals of common law torts.

Respondent submits that the Fifth Circuit Court of Appeals in the instant case was the first Court of Appeals to rule on the question of punitive damages. Its holding was well grounded in the law however. There have been other cases which have interpreted the act as being one which would allow the recovery of punitive damages where malice or wanton indifference exist. Such a case is Farowitz v. Associated Musicians of Greater New York, Local 802, A.F. of M. 241 F. Supp 895. This decision, coming from a District Court held that punitive damages may be awarded if actual malice or reckless or wanton indifference to the rights of plaintiff existed.

Respondent admits that there are two District Court

decisions under L.M.R.D.A. where the District Court Judges narrowly construed the act and did not allow punitive damages. There are few cases which take up the issue of punitive damages. Respondent attributes this to the newness of the act.

However, there are many states which have statutes covering wrongful expulsion from unions and causes of action providing similar remedies to L.M.R.D.A. These states have ruled faborably on the issue of punitive damages. Appellee submits that although these state rulings are not binding on Federal Courts and are not interpretative of this act, they are certainly persuasive authority in deciding this issue.

One of the leading cases under this catagory is Fittipaldi, Et al. Vs. Legassie, Et al, New York Supreme Court, Appellate Division, Fourth Department, April 12, 1963, 53 LRRM 2175. This case stated the following on the issue of punitive damages:

> "Punitive damages may be awarded union members who were wrongfully suspended or expelled from union. Strong reasons of public policy promote use of punitive damages to deter union officials from conduct designed to suppress rights of members to fair and democratic hearings on legitimate disciplinary charges; imposition of such damages, when requisite elements of malice, gross fraud, wanton or wicked conduct, violence or oppression are present, serves to achieve deterrents they were designed to effect.
>
> "* * * Courts in other jurisdictions have

awarded exemplary damages for wrongful expulsion or suspension. (See Manning v. Kennedy, 320 Ill. App. 11, 49 N.E. 2d 658; Taxi Cab Drivers Local Union No. 889 v. Pittman, 322 P. 2d 159, 41 LRRM 2045 Harper v. Gribble, 143 Colo. 502, 355 P. 2d 526, 46 LRRM 2860; St. Louis S. W. Ry. Co. of Texas v. Thompson, 113 S. W. 144."

Certainly these principals apply to the meaning and purposes of L.M.R.D.A. and should be applied. The policy of L.M.R.D.A. is to protect the union members from wrongful expulsion or other forms of wrongful discipline. It would be unreasonable to say that congress did not intend for the courts to use all in their power to protect union members from this sort of conduct. Respondent submits that to exclude punitive damages as an element of damage under L.M.R.D.A. would merely lessen the deterrent for unions from wrongfully disciplining their members. The result of this would be more wrongful discipline, and therefore, more useless litigation cluttering up our courts. Surely, this court does not want this result. This court surely wants to prevent this type of action, rather than allow it to continue and force illegally disciplined members into the courts for address. Respondent submits that punitive damages are necessary in this type of action in order to protect not only the respondent's rights but further to protect the rights of all union members wherever they may be.

Respondent further submits to this Honorable Court that the essence of the L.M.R.D.A. is wrongful discipline of any type. In the instant case, the wrongful discipline administered was the wrongful expulsion of the respondent from his union. It is easy to show loss requiring compensatory

damages from discipline of this type. However, respondent further submits that there are other types of wrongful disci; pline which labor unions may bring against their members under which compensatory damages may not be easily shown. Suppose a member is wrongfully disciplined and placed in a catagory where he could not run for office in the union although he can still work at his trade. Such a wrongfully disciplined member could show very little in the way of compensatory loss. He might attempt to show that he would have run for an office in the union. It is purely speculative as to whether or not he would have run. It is also speculative as to whether or not he would have been elected. So he could not seek compensatory damages for the loss of the right to run for office. Respondent submits that in such a case as this the only appropriate relief could be administered in the form of punitive damages for wrongful discipline. To deny him punitive damages in such a case would leave him with no remedy at all under the act.

Petitioner, in his argument on punitive damages again goes into a discussion of his interpretation of the legislative history of the act. He cites committee reports on the Kennedy–Erwin Bill, the Kuchel Substitute, the McClellan Bill of Rights as well as Senator Goldwater and other senators. Respondent submits that these particular bills were not passed and that it was the Landrum–Griffith Bill that was passed. Respondent further submits that whatever individual congressmen or senators thought of this particular bill does not describe fully the intent of congress as a whole. There are over four hundred members in the House of Representatives. There are one hundred members of the Senate. To attempt to digest the "intent of the legislature" from such a large body by samplings of statements from individual senators or congressmen is certainly foolhardy. The intent of congress can best be determined by the fair

and plain meaning of the act itself, by the purposes for which the act was passed and by the common law doctrines which have applied to other tort actions and to similar causes of action in the several states that have legislated against this type of wrongful act.

Respondent further submits that it is necessary to allow punitive damages under this act to protect the individual laborer in the United States. In the beginning, when the labor movement first started in this country, the individual laborer's big problem was exploitation by management. He formed labor unions to institute collective bargaining as a whole in order to protect himself from the wrongful acts of his employer. Today his greatest threat is not from management. Today his greatest threat has been from the arbitrary discipline of little "labor barons" in his organization.

A labor union is an organization like many others. In the past they have been run similarly to the military in the sense that officers must back up their sergeants. As a consequence, in many locals, business agents have come into power and maintained themselves in power by favoring various individuals in the local. When finding disgruntled members in such a local, such business agents and officers have been able to dispose of threats of opposition when elections come around again by wrongfully disciplining these members and forcing them out. The labor union has backed up this wrongful discipline in order to maintain its structure of power through the business agent and officers of the Locals.

To deny certiorari in this case is to liberate and free the individual member of labor unions of the United States. No longer will such situations exist where business agents and officers can wrongfully discipline members in order to keep

them in line. Labor unions will have to become more democratic and the individual laborer will then know that he can speak out in his local without fear of recrimination. The democracy and the progression of the labor movement demands that this court affirm the position of the Fifth Circuit Court of Appeals on the issue of punitive damages.

Petitioner further contends that the contention that punitive damages should not be awarded under the L.M.R.D.A. on the grounds that such a doctrine would impede or destroy the labor organizations of this country is patently unreal. Labor organizations today are big business. The particular union involved is a large entity likened to General Motors. To say that punitive damages would destroy the petitioner is certainly ridiculous.

It is well to remember that courts have control over the measure of damages. Petitioner suggests in its brief that strong unions would suffer from too great assessments because of their size. The small unions would be destroyed. It is traditional in tort actions, where damages are allowed, that the trial court and the Appellate Court can reduce awards when they are made excessively. If such could come to pass as petitioner contends, the trial courts and Appellate Courts could certainly reduce any excessive awards under the doctrine of punitive damages. To rule that punitive damages are available under the L.M.R.D.A. would not, as petitioner contends, arm disputants with threats which could adversely affect the functioning and stability of labor organizations. They would be strengthened by maintaining the democracy and freedom of their individual members.

It is well to be remembered too that such damages would only be available when two conditions are met: i.e.1) wrongful discipline on the part of the union and 2) accompanied with malice or wanton indifference to the disciplined parties

rights. If the labor union runs itself democratically and if they protect their members from such wrongful discipline, surely they need not fear the threat of punitive damages as described by petitioner in his brief.

Petitioner further contends that the availability of punitive damages produces a further danger in their "Interrorem" effect. Petitioner contends that disciplinary proceedings would be greatly impeded by such a doctrine. This is not true. Certainly the courts would recognize that disciplinary proceedings are necessary for labor organizations to function as well as any organization. It is well to remember that as long as the union grants its members a full and fair hearing and does not wrongfully discipline them with malice or wanton indifference that they need not fear punitive damages.

It is well known that labor unions have their own general counsel and legal departments the same as large corporations. It is also well known that each local retains an attorney to represent it and keeps him on a retainer for legal advise. Equipped with such legal talent, it is inconceivable that any union which desires to conduct its disciplinary matters fairly and without malice or wanton indifference to its members should fear disciplining its members when needed. Such legal talent could surely prevent the pitfall of wrongful discipline accompanied with malice or wanton indifference to their members.

The argument of the petitioner as to the "Interrorem" effect of this doctrine is certainly unreal. At most it is merely an admission of the respondents contention that punitive damages are necessary as a deterrent effect for wrongful discipline accompanied with malice or wanton indifference to the rights of the members of labor unions.

Petitioner in his brief further takes the position that congress has long had a policy in the labor field of denying punitive damages. Petitioner cites many cases which were decided under the National Labor Relations Act. The nature and purpose of the National Labor Relations Act are entirely different from the nature and purposes of L.M.R.D.A. The Taft Hartley Act expressly states that the aggrieved party shall recover the "damages by him sustained." Of course an individual cannot sustain punitive damages. The language of L.M.R.D.A. is entirely different from that of Taft Hartley.

In addition to this, Taft Hartley was set up to be administered by the National Labor Relations Board. It did not come directly into the Federal District Court and therefore did not enter into the field of tort and encompass it with all of its common law doctrines as the cause of action created by L.M.R.D.A. Respondent submits that because of the differences in the wording of these two individual acts, and because of the differences in their background in the fact that L.M.R.D.A. creates a remedy for a tort type action, that the Taft Hartley Act and the suits which petitioner uses as precedent are no precedent when deciding a case under L.M.R.D.A.

Appellant further cites various cases to the effect that damages for emotional distress (International Brotherhood of Boilermakers, Ironship Builders, Blacksmiths, Forgers and Helpers, AF of L – CIO, Et al v. Rafferty, Et al, 348 F. 2d 307), and damages for attorneys fees are not recoverable under L.M.R.D.A. Traditionally, Attorneys fees are not recoverable in tort actions under the common law. The decision in Rafferty was narrowly stated to cover only damages for emotional distress. These cases are certainly not precedent on the question of punitive damages. They decide merely the questions before them, i.e. other damages besides puni-

tive damages.

1. C. AT THE TRIAL OF THIS CAUSE THERE WAS CERTAINLY EVIDENCE TO SHOW MALICE BY THE DEFENDANT AND WANTON DISREGARD FOR THE RESPONDENT'S RIGHTS.

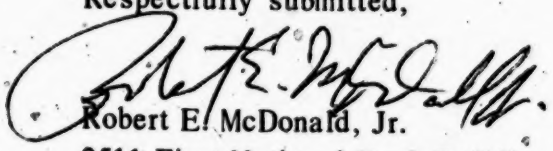
Respondent submits to this Honorable court that it was decided as a matter of law that there was no evidence to support the finding of guilt under Article XIII, Section 1, of the Subordinate Lodge Constitution. The plain meaning of this article should indicate to any reasonable man that the actions of the respondent, as shown by the evidence before the board would not make him guilty of such a charge. Respondent further submits to this Honorable Court that this defendant had legal talent of retained counsel for the local and general counsel employed by the International which surely could have seen that the finding of guilt was not proper under this section.

This being so, the only conclusion that a reasonable man could make was that the union, acting through its agents and officers wrongfully found the defendant guilty of Article XIII, Section 1, and by doing so, made his expulsion mandatory. That this union knew from the plain meaning of said article that respondent should not have been found guilty as charged. That knowing that it had wrongfully done this act, it was therefore guilty of malice. Therefore respondent submits that there is ample evidence that the petitioner was guilty of malicious conduct or wanton indifference to the rights of respondent when it found him guilty of the charges under Article XIII, Section 1 of the Subordinate Lodge Constitution.

CONCLUSION

For the fact that the rulings of the District Court and Fifth Circuit Court of Appeals are well grounded in the law and not a radical departure from accepted principals of law, the petition for Writ of Certiorari should be denied and appropriate damages under Rule 54 should be assessed against the petitioner together with interest at the rate of six per cent per annum from the date of judgment.

Respectfully submitted,



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